

## REMARKS

Claims 1-11 are pending in this patent application. By this amendment, claim 1 has been amended, and claims 12-20 have been added.

Reconsideration of this patent application, as amended, is respectfully requested.

### **35 U.S.C. § 102 Rejection**

Claims 1-4, 7, 8, and 10 were rejected under 35 U.S.C. § 102 as being anticipated by Daum et al. (U.S. Patent Publication Number 2003/0040753).

Claim 1 has been amended to more clearly define the invention.

Reconsideration of claims 1-4, 7, 8, and 10, as amended, is respectfully requested.

### *Amended Claim 1*

Claim 1, as amended, recites the following limitations:

the upper and lower parts being connected to one another with the mating surfaces in contact with one another,

the upper and lower parts being rotatable in relation to each other about an axis which is perpendicular to the mating planes,

the axis being non-parallel to the axes of the upper and lower parts of the column member.

Claim 1 has been amended to positively recite that the upper and lower parts are rotatable in relation to each other about an axis which is perpendicular to the mating planes.

Among other things, Daum does not disclose that the axis about which the upper and lower parts are rotatable is non-parallel to the axes of the upper and lower parts of the column member. The Office Action alleges the working handle 210 (equated with the claimed *upper part*) of the working needle 202 includes a mating surface that defines an upper part mating plane, and the guiding cannula 201 (equated with the claimed *lower part*) includes a mating surface that defines a lower part mating plane, and further these two mating surfaces are in contact with one another. Even if so, the axis about which the working handle 210 and the guiding cannula 201 are rotatable is not non-parallel with axes of the working handle 210 and the guiding cannula 201. Rather, the axes appear to be coincident. Thus, Daum does not disclose that the axis about which the upper and lower parts are rotatable is non-parallel to the axes of the upper and lower parts of the column member as called for in amended claim 1. Since Daum does not disclose this limitation of amended claim 1, Daum does not anticipate amended claim 1.

This claimed feature results in significant advantages to the device of Applicants' claimed invention since by varying the angular position of the upper part relative to the lower part, the angle of inclination of the guide (e.g. guide plate 10 – see Applicants' patent application at Fig. 2) relative to the lower part of the column member may be varied. Thus, proper positioning of a cutting tool may be readily achieved with Applicants' claimed navigation tool.

### *Claims 2-4, 7, 8, and 10*

Each of claims 2-4, 7, 8, and 10 depends directly or indirectly from amended claim 1. As a result, each of claims 2-4, 7, 8, and 10 is allowable for, at least, the reasons hereinbefore discussed with regard to amended claim 1.

### **35 U.S.C. § 103 Rejection**

Claims 5, 6, 9, and 11 were rejected under 35 U.S.C. § 103 as being unpatentable over Daum et al. (U.S. Patent Publication Number 2003/0040753). Reconsideration of claims 5, 6, 9, and 11 is respectfully requested.

Each of claims 5, 6, 9, and 11 depends directly or indirectly from amended claim 1. As a result, each of claims 5, 6, 9, and 11 is allowable for, at least, the reasons hereinbefore discussed with regard to amended claim 1.

## **New Claims 12-20**

### *New Claim 12*

New claim 12 recites the following limitations:

the upper part having a first mating surface at its lower end which defines an upper part mating plane and the lower part having a second mating surface at its upper end which defines a lower part mating plane,

wherein (i) the upper part is rotatable in relation to the lower part about a first axis which is perpendicular to the upper part mating plane, (ii) the upper part defines a second axis, and (iii) the first axis is non-parallel to the second axis.

In Daum, the axis about which the working handle 210 and the guiding cannula 201 are rotatable is not non-parallel with axis of the working handle 210. Rather, the axes appear to be coincident. Thus, Daum does not disclose (i) the upper part is rotatable in relation to the lower part about a first axis which is perpendicular to the upper part mating plane, (ii) the upper part defines a second axis, and (iii) the first axis is non-parallel to the second axis. Since Daum does not disclose these limitations of new claim 12, Daum does not anticipate new claim 12.

### *New Claims 13-20*

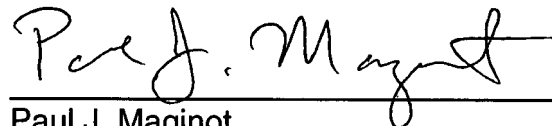
Each of new claims 13-20 depends directly or indirectly from new claim 12. As a result, each of new claims 13-20 is allowable for, at least, the reasons hereinbefore discussed with regard to new claim 12.

## Conclusion

In view of the foregoing amendments and remarks, it is submitted that this application is in condition for allowance. Action to that end is hereby solicited. It is respectfully submitted that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response, and any deficiency in fees be charged, or any overpayment in fees be credited, to our Deposit Account No. 13-0014.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Paul J. Maginot", written over a horizontal line.

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October 18, 2007

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